

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FRANCIS P. SAITTA

v.

MARYLAND DEPARTMENT OF
HEALTH AND MENTAL HYGIENE

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Civil No. JFM-05-832

ECF Exempt

MEMORANDUM

Plaintiff has filed this *pro se* action claiming that his due process rights were violated because of an alleged conflict between a provision of the State Personnel and Pensions Act (“SPP”), Maryland Code Ann. State Pers. & Pens. §11-109(c), and §1704.05.01(I) of the Code of Maryland Regulations (“COMAR”). SPP §11-109(c) places the responsibility upon an employee to take an appeal from an employment related disciplinary action, and COMAR § 1704.05.01(I) provides that the appeal is to be taken “on a form provided by the Secretary [of Budget and Management].”

Plaintiff’s employment was terminated on June 19, 2001, and the gravamen of his claim is that his due process rights were violated by the fact that he was not provided with an appeal form. He seeks reinstatement with back pay and damages in the amount of ten million dollars. Defendant, the Maryland Department of Health and Mental Hygiene (“DHMH”) has filed a motion to dismiss or for summary judgment. Plaintiff has responded to the motion. The motion will be granted.

A.

In April 2001, plaintiff began a six-month probationary period of employment as a Public Health Laboratory Scientist III in the West Nile Surveillance Program in DHMH’s Laboratories

Administration. On June 19, 2001, his probationary employment was terminated, effective July 3, 2001, because he was “[u]ncooperative and argumentative during training [and unable] to work as [a] team member in the laboratory testing unit.” The written notice of termination he signed contained a provision notifying him that within 15 days he could appeal the decision to terminate his employment to the head of “the principal unit.” Plaintiff never requested any form to appeal the decision. On June 20, 2001, he did send a letter to his supervisor (with copies to the Governor, the Secretary of DHMH, and the head of the Virology Section of the Laboratories Administration). However, the letter did not assert that his termination on probation was illegal or unconstitutional or state the issues of fact and law he believed would warrant rescinding the decision, as required by the SPP. Indeed, while he concluded the letter by saying that he “retain[ed] a sincere desire in doing hands-on laboratory science and planning at Laboratories Administration,” he never expressly asked that the decision to terminate his employment be rescinded. Rather, he complained about the laboratory’s procedures and its technical management of the Department’s West Nile Virus Program.

Two months later, on August 14, 2001, plaintiff wrote to the Governor, again expressing his views about the surveillance program and, for the first time, requesting a “review of . . . [his] summary dismissal.” Correspondence between plaintiff and the Secretary of DHMH ensued during August and September, 2001, but none of the letters addressed the subject of plaintiff’s termination.

On January 8, 2003, plaintiff wrote to the Executive Director of the Maryland Department of Budget and Management (“DBM”). He complained that after his employment had been terminated, he had applied, but was not selected, for a different position in the DHMH

Laboratories Administration. Plaintiff's letter was referred to Ann Gordon, the State's Equal Employment Opportunity Coordinator at the DBM. Thereafter, plaintiff wrote a letter to Ms. Gordon dated February 8, 2003, in which he complained that his request for a review of termination of his probationary employment had been ignored. In response, the DBM forwarded plaintiff the appeal form provided for in COMAR §17.04.05.01(I). Plaintiff completed the form and filed it with DBM on February 14, 2003, approximately twenty months after his probationary employment had been terminated.

Plaintiff's appeal was referred to Maryland's Office of Administrative Hearings for a hearing. DHMH moved to dismiss the appeal as having been untimely filed. An Administrative Law Judge granted the motion. Plaintiff then filed a petition for review of that decision in the Circuit Court for Baltimore City. The Circuit Court affirmed the Administrative Law Judge's decision. Plaintiff then appealed to the Court of Special Appeals which, in turn, affirmed the decision of the Circuit Court. Plaintiff then filed petitions for *certiori* with the Maryland Court of Appeals and the United States Supreme Court. Both of the petitions were denied.

B.

DHMH asserts that plaintiff's due process rights were not violated and that, in any event, his claim is barred by limitations and by the doctrine of *res judicata*.¹ All three of these defenses are meritorious.

First, Maryland's three year statute of limitations applies to a constitutional claim filed by a discharged employee. *See Knickman v. Prince George's County*, 187 F. Supp. 2d 559, 562-

¹DHMH also asserts defenses based on the Eleventh Amendment and the *Rooker-Feldman* doctrine. Although logically I should perhaps consider these defenses first, I will not do so because the other defenses provide a narrower ground upon which to decide the case.

63 (D. Md. 2002). Plaintiff's probationary employment was terminated on June 19, 2001, almost four years before he instituted this action. Although plaintiff contends that he did not become aware of the existence of COMAR §17.04.05.01(I) until May 13, 2003, he knew the facts giving rise to his cause of action from the very beginning.

Second, as just stated, plaintiff admits that he knew about the existence of COMAR §17.04.05.01(I) at the beginning of the administrative hearing. After the ALJ ruled against him, he pursued his remedies through the Maryland courts. He also filed a petition for *certiori* with the Supreme Court of the United States. Plaintiff could have raised his due process claim during the course of those proceedings. Therefore, the doctrine of *res judicata* precludes him from pursuing the claim now. *See generally Hughes v. Insley*, 155 Md. App. 608, 611 (2003).

Finally, plaintiff has not stated a cognizable due process claim. His probationary employment gave him no constitutionally protected liberty or property interest. Moreover, even if he had such an interest, his due process rights were not violated. His appeal was never denied because he did not use the *form* provided for in COMAR §17.04.05.01(I). Rather, his appeal was deemed to be untimely because the June 20, 2001 letter, which he asserts constituted his appeal, did not contain within it the information required by SPP §11-109(c).

A separate order of dismissal is being entered herewith.

Date: July 19, 2005

/s/ _____
J. Frederick Motz
United States District Judge

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ORDER

For the reasons stated in the accompanying memorandum, it is, this 19th day of July 2005

ORDERED

1. Defendant's motion to dismiss or for summary judgment is treated as a motion to dismiss and, as such, is granted; and

2. This action is dismissed.

/s/ _____
J. Frederick Motz
United States District Judge